customer bills regarding the contribution amount.[207] The Commission stated that characterizing universal service charges on customer bills as a federally mandated surcharge would be misleading because carriers retain the flexibility to structure their recovery of the costs of universal service in many ways.[208] Carriers choosing to recover universal service costs from consumers were instructed to convey information about such charges in a manner that does not mislead by omission and that accurately describes the nature of the charge.[209]

81. On September 17, 1998, the Commission released the *Truth-in-Billing NPRM*, seeking comment on how to ensure that consumers receive thorough, accurate, and understandable bills from their telecommunications carriers.[210] In response to evidence suggesting widespread confusion among consumers in this area, the Commission sought comment in the *Truth-in-Billing NPRM* on whether carriers were providing complete, accurate, and understandable information regarding the amounts of, and the reasons for, the new charges on customer bills.[211] The Commission asked commenters to address whether it should prescribe "safe harbor" language that carriers could include on their bills to ensure that they are meeting their obligations to provide truthful and accurate information concerning the recovery of universal service charges.[212] The Commission also sought comment on whether charging a customer more than a proportionate share of the carrier's universal service costs attributable to that customer would violate section 201(b) of the Act.[213] The Commission recognized that it had recently referred to the Joint Board the issue of whether it is reasonable for telecommunications providers to recover universal service contributions through rates, surcharges, or other means, and that nothing in the *Truth-in-Billing NPRM* was intended to supersede or interfere with the Joint Board's evaluation.[214] Instead, the Commission indicated that the Joint Board's recommendations would inform the Commission's judgment in the *Truth-in-Billing* proceeding.[215]

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[207] *First Report and Order*, 12 FCC Rcd at 9211-12, para. 855.

[208] *First Report and Order*, 12 FCC Rcd at 9211-12, para. 855.

[209] *First Report and Order*, 12 FCC Rcd at 9211-12, para. 855.

[210] *Truth-in-Billing and Billing Format*, Notice of Proposed Rulemaking, 13 FCC Rcd 18176 (1998) (*Truth-in-Billing NPRM*).

[211] *Truth-in-Billing NPRM*, 13 FCC Rcd at 18189, para. 26.

[212] *Truth-in-Billing NPRM*, 13 FCC Rcd at 18189-90, paras. 27-30.

[213] *Truth-in-Billing NPRM*, 13 FCC Rcd at 18190, para. 31; *see also* 47 U.S.C. § 201(b) (stating that all charges and practices regarding communications services shall be just and reasonable).

[214] *Truth-in-Billing NPRM*, 13 FCC Rcd at 18189, para. 26 n.55.

[215] *Truth-in-Billing NPRM*, 13 FCC Rcd at 18189, para. 26 n.55.

82. In the *Second Recommended Decision*, the Joint Board reaffirmed that interexchange carriers, wireless carriers, and competitive LECs should have the choice of whether to collect universal service assessments from end users through a line-item charge on their bills.[216] Based on its concerns that consumers were not receiving accurate and truthful information from carriers, however, the Joint Board recommended that the Commission provide carriers with strict guidance about the extent to which they can recover their universal service contributions from consumers.[217] Specifically, the Joint Board recommended that the Commission carefully consider adopting a rule that limits the line-item universal service charge on a consumer's bill to an amount no greater than the carrier's universal service assessment rate.[218] The Joint Board also recommended that the Commission prohibit carriers from identifying universal service charges as a "tax" or as being mandated by the Commission or federal government, either on written bills or through oral descriptions from customer service representatives.[219] The Joint Board further recommended that the Commission explore in the *Truth-in-Billing* proceeding the possibility of establishing standard nomenclature that carriers could use on their bills regarding universal service charges.[220] The Joint Board suggested using the term "Federal Carrier Universal Service Contribution" as standard language on consumer bills, accompanied by an explanation that the carrier has chosen to separate its universal service contribution from its other costs of business, and to display the contribution as a line-item on the consumer's bill.[221] Finally, the Joint Board recommended that the Commission work with other federal and state regulatory agencies charged with consumer protection to ensure that consumers are provided with complete and accurate information regarding universal service charges.[222]

83. The Commission received a broad range of comments in response to the proposals in the *Second Recommended Decision*.[223] Several commenters pointed out, however, that the

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[216] *Second Recommended Decision*, 13 FCC Rcd at 24771, para. 69. Incumbent LECs subject to price cap regulation made exogenous increases in price cap indices for baskets containing end-user revenues, to permit recovery of their universal service contribution obligations. *See Access Charge Reform Order*, 12 FCC Rcd at 16147-48.

[217] *Second Recommended Decision*, 13 FCC Rcd at 24770, para. 68.

[218] *Second Recommended Decision*, 13 FCC Rcd at 24771, para. 69.

[219] *Second Recommended Decision*, 13 FCC Rcd at 24771-72, para. 70.

[220] *Second Recommended Decision*, 13 FCC Rcd at 24772, para. 72.

[221] *Second Recommended Decision*, 13 FCC Rcd at 24772, para. 72.

[222] *Second Recommended Decision*, 13 FCC Rcd at 24773, para. 73.

[223] *See, e.g.*, AT&T comments at 8-9; Airtouch comments at 2-7; Ameritech comments at 10-11; BellSouth comments at 9; Boston University comments at 1-2; CompTel comments at 7; Dobson comments at 2-9; GSA comments at 14-17; GTE comments at 32; Illinois Commission comments at 4; MCI WorldCom comments at 18-22; Ohio Commission comments at 9-10; PCIA comments at 2-5; RTC comments at 24-25; Sprint comments

issues addressed by the Joint Board concerning the recovery of universal service contributions from consumers are already pending in the *Truth-in-Billing* proceeding.[224] These commenters suggest that it would be more appropriate for the Commission to consolidate its handling of the recovery issues in the *Truth-in-Billing* proceeding.[225]

84. On May 11, 1999, the Commission released the *Truth-in-Billing First Report and Order and FNPRM*.[226] In the *Truth-in-Billing First Report and Order*, the Commission adopted basic principles mandating that consumer telephone bills must be clearly organized, must contain full and non-misleading descriptions of charges, and must clearly and conspicuously disclose any information the consumer may need to contest charges on the bill.[227] In addition, based in part on the Joint Board's *Second Recommended Decision* and the comments in response to it, the Commission made specific findings regarding carrier recovery of universal service contributions.

85. First, the Commission declined to require that contributions be recovered through an end-user surcharge.[228] Instead, the Commission reaffirmed its commitment to allowing carriers the flexibility to decide whether, how, and how much of their costs they choose to recover from consumers.[229] Second, the Commission declined to adopt a specific rule restricting a carrier from charging a line-item assessment amount greater than the carrier's universal service assessment rate, or a specific rule prohibiting a carrier from charging a customer more than the customer's *pro rata* share of the carrier's universal service contribution.[230] The Commission noted that contributions may depend on variables not known to the carrier at the time the carrier issues a bill.[231] The Commission decided to evaluate allegedly unjust or unreasonable line-item charges on a case-by-case basis under its section

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at 16-22; TRA comments 2-8; USTA comments at 11-13; US West comments at 13-17; Wyoming Commission comments at 7; AT&T reply comments at 12-15; GSA reply comments at 16-20; GTE reply comments at 22-28; MCI WorldCom reply comments at 8-11; Sprint reply comments at 4-5; Western Wireless reply comments at 16-17.

[224] PCIA comments at 2; Sprint comments at 16-17; AT&T reply comments at 14-15.

[225] PCIA comments at 2; Sprint comments at 16-17; AT&T reply comments at 14-15.

[226] *Truth-in-Billing First Report and Order and FNPRM*, FCC 99-72.

[227] *Truth-in-Billing First Report and Order* at para. 5.

[228] *Truth-in-Billing First Report and Order* at para. 55.

[229] *Truth-in-Billing First Report and Order* at para. 55.

[230] *Truth-in-Billing First Report and Order* at para. 56.

[231] *Truth-in-Billing First Report and Order* at para. 56.

201(b) authority.[232] Finally, the Commission concluded that line-item charges associated with federal regulatory action should be identified on bills through a standard industry-wide label.[233] So long as carriers include the standard label, they would be free to elaborate on the nature and origin of the universal service charge through a full, accurate, and non-misleading description framed in language of their own choosing.[234] In the *Truth-in-Billing FNPRM*, the Commission tentatively concluded that the standard label to describe universal service charges should be "Federal Universal Service," and sought comment on alternative nomenclature.[235]

2. Discussion

86. Because we have resolved, or are resolving, all of the carrier recovery issues in the *Truth-in-Billing* proceeding, we need not revisit them here. We continue to believe that the ongoing *Truth-in-Billing* proceeding, with the detailed record being developed there, is the correct forum to resolve these issues. We wish to emphasize, however, that prior to the adoption in the *Truth-in-Billing* proceeding of any final standardized label for universal service charges on consumer bills, we will not hesitate to take enforcement action against carriers who engage in unjust or unreasonable practices in violation of section 201(b).[236]

D. Assessing Contributions from Carriers

1. Background

87. In the *First Report and Order*, the Commission concluded that contributions to federal high-cost and low-income support mechanisms would be assessed based solely on end-user interstate telecommunications revenues, while universal service support for eligible schools, libraries and rural health care providers would be assessed based on interstate and intrastate end-user telecommunications revenues.[237] The Commission declined to assess both interstate and intrastate end-user revenues for the high-cost and low-income support mechanisms because the states are currently reforming their own universal service support mechanisms, and it would have been premature to assess contributions on intrastate revenues before appropriate forward-looking mechanisms and revenue benchmarks are developed.[238] The Commission also concluded that carriers shall be permitted to recover their contributions

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[232] *Truth-in-Billing First Report and Order* at para. 56.

[233] *Truth-in-Billing First Report and Order* at para. 49.

[234] *Truth-in-Billing First Report and Order* at para. 55.

[235] *Truth-in-Billing First Report and Order* at para. 67.

[236] 47 U.S.C. § 201(b).

[237] *First Report and Order*, 12 FCC Rcd at 9197-05, paras. 824-41.

[238] *First Report and Order*, 12 FCC Rcd at 9200-01, paras. 831-36.

to universal service support mechanisms only through rates for interstate services.[239]

88. The Joint Board's recommendations regarding the revenue base on which universal service contributions should be assessed were tentative, pending the Fifth Circuit's decision in *Texas Public Utility Counsel v. FCC*.[240] The Joint Board recognized that the current method of basing contributions solely on interstate end-user revenues gives the states the most flexibility to tap into their intrastate revenue bases to advance universal service.[241] The Joint Board also recognized, however, that assessing only interstate end-user revenues may create burdens for carriers that do not routinely have to separate revenues on a jurisdictional basis for regulatory or business purposes, such as wireless carriers and competitive LECs.[242] The Joint Board observed that a jurisdictional assessment base makes it difficult for carriers to allocate revenues associated with bundled services, and stated that a non-jurisdictional assessment base would enable state and federal mechanisms to tap broader revenue bases, thereby lowering the assessment rate.[243] The Joint Board recommended that, if the Fifth Circuit determines that the Commission may properly assess all revenues for universal service contributions, the Commission may wish to consider using that assessment methodology for high-cost support. If the Commission adopts such an assessment methodology, it should also permit states to do the same for their state universal service contributions.[244] In the alternative, the Joint Board also indicated that the Commission could consider assessing high-cost universal service contributions on a flat, per-line basis.[245]

89. There is a lack of consensus among the parties as to the appropriate basis for contributions to the high-cost universal service support mechanisms. While some commenters support assessing contributions to the high-cost universal service support mechanisms based on both intrastate and interstate end-user revenues[246] some commenters assert that contributions should continue to be based solely upon interstate end-user revenues.[247]

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[239] *First Report and Order*, 12 FCC Rcd at 9198-00, paras. 825-30.

[240] *Second Recommended Decision*, 13 FCC Rcd at 24767-68, para. 63 (citing *Texas Office of Public Utility Counsel v. FCC*, No. 97-60421 (5th Cir. argued Dec. 1, 1998)).

[241] *Second Recommended Decision*, 13 FCC Rcd at 24767-68, para. 63.

[242] *Second Recommended Decision*, 13 FCC Rcd at 24767-68, para. 63.

[243] *Second Recommended Decision*, 13 FCC Rcd at 24767-68, para. 63.

[244] *Second Recommended Decision*, 13 FCC Rcd at 24767-68, para. 63.

[245] *Second Recommended Decision*, 13 FCC Rcd at 24767-68, para. 63.

[246] *See* AT&T comments at 6; GSA comments at 6; GTE comments at 31; Bell South comments at 9.

[247] *See, e.g.*, Ameritech comments at 10; Bell Atlantic comments at 7; California Commission comments at 7-8, 10-11; Illinois Commission comments at 5; Ohio Consumers' Counsel comments at 8; Sprint comments at 14-15.

2. Discussion

90. The Fifth Circuit has not yet issued a decision in *Texas Public Utility Counsel v. FCC*. While we acknowledge the Joint Board's observation that changing the assessment base to include both interstate and intrastate end-user telecommunications revenues would ease burdens on carriers that would not otherwise have to separate revenues on a jurisdictional basis and that a broader revenue base would result in a lower assessment rate, these recommendations are contingent upon the Fifth Circuit's decision in *Texas Public Utility Counsel v. FCC*. Accordingly, pending further resolution of this matter by the Fifth Circuit, the assessment base and the recovery base for contributions to the high-cost and low-income universal service support mechanism that we adopted in the *First Report and Order* shall remain in effect.

E. Unserved Areas

91. During the proceedings that led to the *Second Recommended Decision*, the Arizona Corporation Commission submitted a proposal to use a portion of federal support to address the problem of unserved areas and the inability of low-income residents to obtain telephone service because they cannot afford to pay line extension or construction charges.[248] In the *Second Recommended Decision*, the Joint Board expressed its interest in ensuring that telephone service is provided to unserved areas, and recognized that states other than Arizona may have unserved areas that may need to be examined.[249] Because providing service to unserved areas has historically been addressed by the states, the Joint Board concluded that the states should continue to address unserved area problems, to the extent they are able to do so.[250] The Joint Board recognized, however, that there may be some circumstances that warrant federal universal service support for line extensions to unserved areas. The Joint Board recommended that the Commission investigate the question of unserved areas in a separate proceeding and determine, in consultation with the Joint Board, whether there are unserved areas that warrant any federal universal service consideration.[251]

92. We agree with the Joint Board that, while the states have historically addressed the issue of providing service to unserved areas, there may be unserved areas, or inadequately-served areas characterized by extremely low density, low penetration, and high costs that

[248] Proposal of the Arizona Corporation Commission for Distribution of Federal USF Funds to Establish Service to Low-Income Customers in Unserved Areas, or in the Alternative, for Amendment of the May 8, 1997 Report and Order to Provide for Federal USF Distribution for this Purpose (filed April 27, 1998).

[249] *Second Recommended Decision*, 13 FCC Rcd. at 24764-65, para. 55.

[250] *Second Recommended Decision*, 13 FCC Rcd. at 24764-65, para. 55.

[251] *Second Recommended Decision*, 13 FCC Rcd. at 24764-65, para. 55.

warrant additional federal universal service support.[252] Commenters who addressed this issue agree with the Joint Board that the Commission should investigate this issue further.[253] Bringing service to these areas is clearly within the goal of the 1996 Act to accelerate deployment of services to "all Americans."[254] In accordance with the Joint Board's recommendations, therefore, we will initiate a separate proceeding in July of 1999 to more fully develop the record on this issue, and investigate the nature and extent of the "unserved area" issue in the nation. We anticipate that, as a result of this separate proceeding, and in consultation with the Joint Board, we will be better able to determine whether any of these unserved areas should receive federal universal service support.

F. Periodic Review

93. In the *Second Recommended Decision*, the Joint Board noted that the 1996 Act contemplates that the Joint Board may periodically make recommendations to the Commission regarding modifications in the definition of services supported by the federal universal service support mechanism.[255] In addition to recommending that the Commission continue to consult with the Joint Board on matters addressed in the *Second Recommended Decision*, the Joint Board specifically recommended that the Joint Board and the Commission broadly reexamine the high cost universal service mechanism no later than three years from the implementation date of the revised universal service high-cost mechanism.[256]

94. We affirm our commitment to consulting with the Joint Board on an ongoing basis on issues addressed in this Order. We agree with the Joint Board that ongoing and periodic review is necessary in light of the fact that the telecommunications industry is rapidly changing, and both competition and technological change may affect universal service needs in rural, insular, and high cost areas. We conclude that, in addition to ongoing consultation with the Joint Board, the Commission and the Joint Board shall, on or before January 1, 2003, comprehensively examine the operation of the high-cost universal service mechanism implemented in this Order, including the hold-harmless mechanism.

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[252] For example, such areas may encompass portions of Alaska, certain Native American lands, and other similar areas. We recognize "the distinctive obligation of trust incumbent upon the Government in its dealings with [Native Americans]," *Seminole Nation v. United States*, 316 U.S. 286, 296 (1942), and we are committed to fulfilling this obligation in the area of telecommunications. *See also Ramah Navajo Chapter v. Lujan*, 112 F.3d 1455, 1462 (10th Cir. 1997) (the federal government has a unique trust relationship with Native Americans).

[253] *See* NECA Comments at 3-4, US West Comments at 21-22.

[254] Indeed, the 1996 Act added section 214(e)(3), which provides a mechanism by which state commissions, with respect to intrastate services, may require a carrier to extend service into unserved areas. 47 C.F.R. § 214(e)(3).

[255] *Second Recommended Decision*, 13 FCC Rcd at 24773, para. 74 (citing 47 U.S.C. § 254(c)(2)).

[256] *Second Recommended Decision*, 13 FCC Rcd at 24773, para. 74.

V. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Introduction

95. In the foregoing Order, we have adopted a framework to be used in estimating costs and computing federal support to enable reasonable comparability of rates for non-rural carriers. In this FNPRM, we provide an additional opportunity for interested parties to comment on specific implementation issues now that they are able to work with the cost model. We encourage all commenters to frame their comments in light of the companion *Inputs FNPRM* and to make those comments as specific as possible.[257]

B. Methodology Issues

1. National Benchmark

96. In its *Second Recommended Decision*, the Joint Board supported using a cost-based benchmark, as opposed to one based on revenues, in evaluating rate comparability because state jurisdictions vary in how they set local rates.[258] The Joint Board explained that forward-looking cost estimates for a given area could be compared against the single national cost benchmark in order to determine whether the area has costs that are significantly above the national average.[259] As discussed above in section IV(B)(3)(1), we adopted the Joint Board's recommendation to employ a cost-based benchmark.

97. In setting the level of the national benchmark, the Joint Board recommended that the Commission consider using a range between 115 and 150 percent of the national weighted average cost per line.[260] Although several commenters support the use of a national benchmark, many were reluctant to comment on the range proposed by the Joint Board in the absence of a finalized cost model.[261] For that reason, we seek further comment on the specific cost benchmark that we should adopt, and we seek comment on whether the national benchmark should fall within the Joint Board's recommended range.

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[257] *Inputs FNPRM*, FCC 99-120.

[258] *See Second Recommended Decision*, 13 FCC Rcd at 24761, para. 43.

[259] *See Second Recommended Decision*, 13 FCC Rcd at 24761, para. 43.

[260] *See Second Recommended Decision*, 13 FCC Rcd at 24761, para. 43.

[261] Maine Commission *et al.* comments at 3; Maryland Commission *et al.* comments at 10; Ohio Commission comments at 3-4; Sprint comments at 11-13; USTA comments at 5-6; Wyoming Commission comments at 6-8.

98. The current high-cost mechanism for large carriers[262] provides increasing amounts of support based on the amount by which a carrier's loop costs exceed the national average, beginning with loop costs between 115 percent and 160 percent of the national average. In particular, the current federal support mechanism provides 10 percent support (in addition to the 25 percent allocation of all loop costs to the interstate jurisdiction) for large incumbent LECs with more than 200,000 working loops for book loop costs above 115 percent of the national average, and provides gradually more support for the portion of these carriers' book loop costs exceeding 160 percent of the national average.[263] The following chart summarizes the levels of support provided by the current high-cost mechanism for large carriers:[264]

Loop Cost as a % of the National Average	Amount of Intrastate Loop Cost Supported
greater than 115%, but not greater than 160%	10%
greater than 160%, but not greater than 200%	30%
greater than 200%, but not greater than 250%	60%
greater than 250%	75%

While the existing mechanism provides support for loop costs beginning at 115 percent of the national average, it considers only loop costs, while the forward-looking cost model estimates the forward-looking cost of all components of the network necessary to provide the supported services.

99. Although we have not yet completed our work verifying the results of the forward-looking cost model, the cost model is now operational and, in the foregoing Order, we have adopted the framework of our methodology for its use. The model currently suggests that, using this methodology, a cost benchmark level near the center of the range recommended by the Joint Board would provide support levels that are sufficient to enable reasonably comparable rates, in light of current levels of competition to preserve and advance the Commission's universal service goals. In addition to general comments on the Joint Board's recommended range for the cost benchmark, we also seek specific comment on the level at which we should set the national benchmark, including comment on what additional factors and considerations we should take into account before selecting a final national

[262] Pursuant to section 36.631 of the Commission's rules, the current high-cost mechanism provides greater levels of support for study areas reporting 200,000 or fewer working loops than for study areas reporting more than 200,000 working loops. *See* 47 C.F.R. § 36.631(c), (d).

[263] 47 C.F.R. § 36.631(d). Although the 1996 Act does not specifically define a non-rural carrier, it does define a rural telephone company as a local exchange carrier that provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines or that serves only very small communities as defined by the Act. 47 U.S.C. § 153(37)(C).

[264] 47 C.F.R. § 36.631(d).

benchmark level.[265] We encourage commenters to use updated model outputs in formulating their comments.

100. To ensure that there are no sudden withdrawals or reallocations of federal support to cover costs between the cost benchmark range that we ultimately adopt, we also seek comment today on the Joint Board's recommendation that the new forward-looking mechanism incorporate a hold-harmless provision.[266] In section V(D), below, we seek comment on the specific operation of such a provision. We encourage commenters to consider and discuss the interaction between specific cost benchmark levels and the precise operation of the hold-harmless provision.

2. Area Over Which Costs Should Be Averaged

a. Background

101. In the *First Report and Order*, the Commission adopted the Joint Board's original recommendation that forward-looking economic costs be determined at either the wire center level or below.[267] In the *Second Recommended Decision*, the Joint Board reconsidered its original recommendation, and recommended instead that federal support be determined initially by measuring forward-looking costs on a study area basis, a considerably larger area than the wire center.[268] The Joint Board decided that, although determining costs at the wire center level allows for measurement of support at more granular levels, support calculated at a study area level is more appropriate at this time, because the latter method will properly measure the amount of support that is required of the federal mechanism in light of the current level of local competition.[269] The Joint Board acknowledged, however, that calculating costs at the study area level may be less appropriate as competition continues to develop.[270]

b. Discussion

102. After further consultation with the Joint Board, we seek further comment on

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[265] We have also requested comment on whether we should adopt incremental funding levels, similar to the current mechanism, above a graduated series of benchmarks. *See* section V(B)(2), *infra*, at para. 109.

[266] We reiterate that comparison of the two mechanisms is difficult because the existing mechanism looks at book loop costs, while the new mechanism will consider the forward-looking cost of the entire network infrastructure necessary to provide the supported services.

[267] *First Report and Order*, 12 FCC Rcd at 8884, para. 193.

[268] *Second Recommended Decision*, 13 FCC Rcd at 24758, para. 32.

[269] *Second Recommended Decision*, 13 FCC Rcd at 24759, para. 33.

[270] *Second Recommended Decision*, 13 FCC Rcd at 24759, para. 34.

whether the federal support mechanism should calculate support levels by comparing the forward-looking costs of providing supported services to the benchmark at either (1) the wire center level; (2) the unbundled network element (UNE) cost zone level; or (3) the study area level.

103. A number of commenters have expressed support for calculating costs at the wire center level.[271] As we strive to bring competition to local telephone markets while keeping rates for local service affordable and reasonably comparable in all regions of the country, we recognize two major benefits of such explicit deaveraged high-cost support. As competition places downward pressure on rates charged to urban, business, and other low-cost subscribers, we believe that support deaveraged to the wire center level or below may ensure that adequate support is provided specifically to the subscribers most in need of support, because the support reflects the costs of specific areas. In addition, deaveraged explicit support that is portable among all eligible telecommunications carriers and targeted in a granular manner to support high-cost subscribers could encourage efficient competitive entry in all areas, not just in urban or other low-cost areas. By permitting the incumbent's rates to reflect actual costs in all areas, subject to explicit support assessments or portable support payments, explicit deaveraged support may provide incentives to competitors to expand service beyond urban areas and business centers into all areas of the country and to all Americans, as envisioned by the 1996 Act. We seek comment on this analysis.

104. As an alternative to computing costs at the wire center level, we seek comment on whether we should compare costs to the benchmark at the level of UNE cost zones instead. Under this proposal, each wire center within a UNE cost zone would receive the same amount of support. Thus, support would still be targeted to the general areas that need it most, but upward pressure on the size of the federal fund would be lessened compared to the wire center approach. This approach would also coincide with the rules on the pricing of UNEs.[272] Under our deaveraging rules, state commissions must establish different rates for elements in

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[271] *See* Iowa Commission comments at 2; MCI-WorldCom comments at 4-5; RTC comments at 5; SBC comments at 4-5; Sprint comments at 8-10; USTA comments at 7; US West comments at 8-9; Western Wireless comments at 6-10; Wyoming Commission comments at 4-5.

[272] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996), *aff'd in part and vacated in part sub nom. Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and rev'd in part sub nom. AT&T Corp. v. Iowa Utilities Bd.*, 119 S.Ct. 721 (1999) (*Local Competition Order*). Although the Supreme Court has reinstated our UNE deaveraging rules, *see* 47 C.F.R. § 51.507(f), those rules are currently stayed. *See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deaveraged Rate Zones for Unbundled Network Elements*, Stay Order, CC Docket No. 96-98, FCC 99-86 (rel. May 7, 1999) (*Stay Order*). Pursuant to the *Stay Order*, the stay shall remain in effect until six months after the Commission issues an order in CC Docket No. 96-45 finalizing, and ordering implementation of, high-cost universal service support for non-rural LECs under section 254 of the 1996 Act. *Stay Order*, FCC 99-86 at para. 1. We expect to issue an order this fall that will finalize, and order the implementation of, a new high-cost support mechanism for non-rural LECs. Notwithstanding the stay, some states have already adopted deaveraged UNE rates and we have in the past recognized the benefits to competition of deaveraged UNE rates.

at least three defined geographical areas within the state to reflect geographic cost differences, and may use existing density-related zone pricing plans, or other cost-related zone plans established pursuant to state law.[273] Using UNE zones may avoid opportunities for arbitrage,[274] and because states are responsible for developing UNE zones, states will be able to develop zone boundaries based upon local conditions, including cost characteristics and the status of competition. We generally do not foresee any difficulty using the cost model to mirror state UNE zones, provided that state UNE zones correspond to wire center boundaries. We seek comment, however, on how state UNE zones that potentially do not correspond to wire center boundaries can be effectively used in the cost model. We encourage commenters to use updated model outputs in formulating their comments on this proposal. Finally, we ask commenters to propose any other cost zones, other than UNE zones, that may be an appropriate basis for computing costs.

105. We also seek comment on whether we should calculate costs at the study area level. In recommending that the federal support mechanism calculate costs at the study area level, the Joint Board suggested that the level of competition today has not eroded implicit support flows to such an extent as to threaten universal service.[275] In addition, compared to calculating costs at the level of wire centers or UNE zones, calculating costs at the larger study area level may be more likely to prevent substantial increases in the size of the high-cost support mechanism because high-cost areas within the study area are averaged with lower-cost areas within the study area. In addition, we seek comment on whether comparing costs to the benchmark at the study area level is more consistent with a vision of a federal mechanism for reasonable rate comparability that focuses on support flows *among* states rather than *within* states, and whether such a vision is more consistent with the Joint Board's *Second Recommended Decision*.[276] We seek specific comment, however, on the extent to which competition is likely to place steadily increasing pressure on implicit support flows from low-cost areas and the extent to which this pressure suggests that we should deaverage support in the implementation of our new mechanism. We urge commenters to use updated model outputs when responding to this analysis.

106. We seek specific comment on the impact of using study-area averaged costs in a study area where UNEs are available. In the *Local Competition Order*,[277] the Commission determined that UNEs would be priced in a minimum of three rate zones within a state. If high-cost support is provided using study-area averaged costs, then all lines within the study area would be eligible for the same amount of support even though the UNE rates for those

[273] 47 U.S.C. § 51.507(f). *See* note 272, *supra*.

[274] *See* para. 106, *infra*.

[275] *Second Recommended Decision*, 13 FCC Rcd at 24759, para. 33.

[276] *See generally Second Recommended Decision*, 13 FCC Rcd at 24752-56, paras. 14-26.

[277] *See Local Competition Order*, 11 FCC Rcd 15499.

same lines would vary among rate zones within the state.[278] We seek comment on whether this disparity between support amounts and UNE rates among different rate zones may create incentives for carriers to engage in arbitrage or other uneconomic activities unrelated to the purpose of high-cost support.

107. In recommending that costs be calculated at the study area level, the Joint Board was driven by concerns that the amount of federal high-cost universal service support be "properly measured" in light of the current state of local competition. Comparing costs to a benchmark when averaged over a smaller area is bound to produce higher support calculations, however, because high costs in one area are less likely to be diluted by low costs in another area when the area under consideration is smaller. As discussed above, we agree with the Joint Board that federal support to enable reasonably comparable local rates for non-rural carriers should not increase significantly from current levels. We seek comment, however, on ways to resolve the tension between the goal of preventing the fund from increasing significantly above current levels, and the goal of ensuring that support is, to the extent possible, directly targeted to high-cost areas within study areas. In addition, we seek specific comment below on four proposals to resolve this tension.

108. First, we propose, if we were to determine total support amounts in each study area by running the model to estimate costs at the study area level, to distribute support by running the model again at the wire center level in order to target support to high-cost wire centers within the study area. This approach would not significantly increase the size of the fund, but would ensure that support is distributed to areas that need it most. As a second alternative, we could determine support based on costs averaged at a level more granular than the study area, such as UNE zones or wire centers, but provide only a uniform percentage of the support so indicated. Such an approach would be consistent with the Joint Board's findings that rates are presently affordable and that competition has not yet eroded support to high-cost customers.[279]

109. As a third alternative, we could determine support based on costs averaged at a level more granular than the study area, such as UNE zones or wire centers, but cap the amount of support available to any particular state to a fixed percentage of the overall fund. As a fourth alternative, if we were to determine support based on costs averaged at the UNE zone or wire center level, we could limit the size of the fund either by raising the cost benchmark appropriately or adopting incremental funding levels for costs above the selected benchmark similar to the existing high-cost loop support mechanism. As an example of incremental funding levels, were we to adopt a cost benchmark of 135 percent of the national weighted average cost per line, we could fund 10 percent of the costs that are between 135 percent and 160 percent of the national average, 30 percent of the costs that are between 160

[278] As discussed in note 272 above, although states are not now required to deaverage UNE rates, some states have done so and we have expressed our support in the past for deaveraging of UNE rates.

[279] *Second Recommended Decision*, 13 FCC Rcd at 24746, para. 3, 24760, para. 39, 24763, para. 50.

percent and 200 percent of the national average, and so forth. We seek comment on each of these proposals, including comment on how each meets the statutory requirement that support should be "sufficient."[280] We also ask commenters to suggest additional methods for preventing the size of the fund from growing significantly.

3. Determining a State's Ability to Support High-Cost Areas

110. As discussed above in section IV(B)(3)(2), we agree with the Joint Board that federal support to enable reasonably comparable local rates for non-rural carriers should be determined based, in part, on a state's ability to support its universal service needs internally and that such federal support should be available to the extent the state is unable to achieve reasonably comparable rates using its own resources.[281] We concluded that a fixed dollar amount per line is a reasonably certain and specific means of assessing a state's ability to enable reasonable comparability of rates using its own resources.[282]

111. In this FNPRM, we now seek comment on the fixed per-line dollar amount that should be set to estimate a state's ability to internally support its high-cost areas, and how the amount should be determined. As one option, we observe that in the *First Report and Order*, the Commission suggested a revenue benchmark of approximately $31.[283] In the *Second Recommended Decision*, the Joint Board considered establishing a state's responsibility based on a percentage of revenues, specifically, a range between three and six percent of intrastate telecommunications revenues.[284] We seek comment on whether the per-line amount should be set so that it amounts to between three and six percent of this original $31 revenue benchmark, in order to roughly equal, in absolute dollar terms, the amount that a state could reasonably have anticipated if measured on a revenue percentage basis. For example, a $2.00 per line figure would reflect roughly six percent of $31. Under this fixed dollar amount per line approach, the perceived need for support in the state is first calculated by comparing

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[280] 47 U.S.C. § 254(b)(5).

[281] *See Second Recommended Decision*, 13 FCC Rcd at 24761-62, paras. 42, 44. *See also* Ameritech comments at 10 (stating that the Commission should not adopt a mechanism that requires it to become involved in an analysis of state universal service efforts); Iowa Commission comments at 8-9 (using a percentage of intrastate revenues does not measure a state's ability to support its high cost areas, and would penalize states that have begun rate rebalancing structures); Maine Commission *et al.* comments at 6 (noting that use of a fixed percentage of intrastate revenues would unduly burden high cost states that also have high intrastate revenues); Maryland Commission *et al.* comments at 12-13 (noting that the Commission should consider factors other than a state's ability to support its high cost areas internally, including the greater ability of high-income households to pay for basic local exchange service).

[282] We reiterate that, as discussed above in section IV(A)(4), the federal mechanism is neither contingent upon, nor requires, any particular action by the state.

[283] *First Report and Order*, 12 FCC Rcd at 8924, para. 267.

[284] *Second Recommended Decision*, 13 FCC Rcd at 24762, para. 45.

costs to the benchmark. The state's ability to enable reasonably comparable rates in the face of this perceived need would then be estimated by multiplying the per-line figure by the total number of non-rural carrier lines in the state. If the perceived support need exceeds this estimate of the state's own resources, federal support would support the difference in accordance with the benchmark methodology described above in section IV(B)(3). We seek comment on this proposal.

112. We also seek comment on whether wireless lines should be included in the calculation of a state's ability to support universal service. If commenters believe that wireless lines should be included, we seek comment on whether there should be a distinction between wireless lines of an ETC and wireless lines of a non-ETC.[285] Finally, we emphasize that the use of a fixed per-line dollar value assessment to estimate states' abilities to support their universal service needs internally does not mandate the creation of state universal service funds for this purpose.

C. Distribution and Application of Support

113. As discussed above in section IV(P)(6), we have concluded that, consistent with section 254, carriers should be required to use support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[286] We seek comment on what specific restrictions, if any, are necessary to achieve this statutory requirement. Specifically, in the event that the Commission ultimately decides to average costs over an area larger than the wire center in determining support levels, we seek comment on how this application of support should be accomplished given our tentative conclusion to require carriers to apply federal high-cost support to the wire centers that triggered the need for support.

114. Although the Commission has the responsibility to ensure that support is sufficient to enable reasonable comparability of rates, the states establish specific rate levels. Therefore, we seek comment on whether making federal support available as carrier revenue, to be accounted for by the state in the rate setting process, will sufficiently fulfill the section 254(e)'s requirement that federal support shall be used "only for the provision, maintenance, or upgrading of facilities and services for which the support was intended."[287] We tentatively conclude that making support available as part of the state rate-setting process would empower state regulators to achieve reasonable comparability of rates within their states.[288] For example, we expect that states that have adopted price cap regulation could require

[285] Only ETCs, as defined under the 1996 Act and the Commission's rules, are eligible to receive federal universal service support. *See* 47 U.S.C. §§ 214(e), 254(e); 47 C.F.R. § 54.201.

[286] 47 U.S.C. § 254(e).

[287] 47 U.S.C. § 254(e).

[288] *See Second Recommended Decision*, 13 FCC Rcd at 24755-56, paras. 24-26, 24759-61, paras. 36-40.

exogenous price cap adjustments to reflect the increased support for high-cost areas and that states that retain rate of return regulation would count the new support towards carriers' revenue requirements. In either case, the state would be able to use federal support targeted to high-cost wire centers to enable reasonable comparability of local rates, if it so chose. We seek comment on this proposal. Specifically, we seek comment on whether all state commissions possess the jurisdiction and resources to take the actions this approach would require. We also seek comment on whether, under this proposal, carriers should be required to notify high-cost subscribers that their lines have been identified as high-cost lines and that federal high-cost support is being provided to the carrier to assist in keeping rates affordable in those subscribers' area.

115. In addition, we seek comment on what further restrictions, if any, we should impose on the use of federal support to ensure that recipient carriers use the support in a manner consistent with section 254. The Joint Board recommended that the Commission require carriers to certify that they will apply federal high-cost support in accordance with the statute.[289] The Joint Board also recommended that the Commission should not require states to provide any certification as a "condition" for carriers in the state to receive high cost support, but the Commission should instead permit states to certify that, in order to receive federal universal service support, a carrier must use such funds in a manner consistent with section 254.[290] We seek comment on whether state authority over local rates in a manner cognizant of federal support levels will adequately enforce the requirements of section 254(e), making additional federal regulation unnecessary. Because some states may lack either the authority or the desire to impose conditions on the use of high-cost support, we tentatively conclude that such state oversight, while valuable and potentially sufficient, may not in every case ensure that section 254(e)'s goals are met. Therefore, we seek comment on whether it would be appropriate to condition the receipt of federal universal service high-cost support on any state action, including adjustments to local rate schedules reflecting federal support. We believe that denying support to states that lack the regulatory authority to ensure that federal funds are used appropriately would penalize those states and would not be consistent with section 254's mandates. We tentatively conclude, however, that even states that lack this authority would be able to certify to the Commission that a carrier within the state had accounted for its receipt of federal support in its rates or otherwise used the support for the "provision, maintenance, and upgrading of facilities and services for which the support is intended" in accordance with section 254(e).[291] Conversely, if the state were unable or unwilling to take action to achieve the goals of section 254(e), we could allow such states to refuse federal high-cost support. We seek comment on these approaches, including comment on whether implementation of multiple options might best achieve the goals of section 254(e), and comment on whether any carrier-initiated action would be necessary in states with limited authority. Finally, we seek comment on what carrier or state commission action, if any, may

[289] *Second Recommended Decision*, 13 FCC Rcd at 24766, para. 57.

[290] *Second Recommended Decision*, 13 FCC Rcd at 24766, para. 58.

[291] 47 U.S.C. § 254(e).

be necessary to prevent double-recovery of universal service support at both the federal and state level.

116. Under the approach discussed above, we recognize that we may need to allocate federal support among high-cost wire centers within a carrier's study area. If the federal support amount based on forward-looking cost provides only a portion of the support for a given wire center, or if we choose to fund only a portion of the support otherwise indicated by the model,[292] we seek comment on means by which to perform this allocation. If a carrier does not receive support equal to the full amount of the difference between the forward-looking cost estimate for the wire center and the threshold level for federal support, we tentatively conclude that it should allocate the support among all lines in these high-cost wire centers in a *pro rata* manner, based upon the difference between the federal benchmark, plus state supported levels, and the wire center's forward-looking cost of providing service. We believe this approach has the potential to foster competition because the amount of the support available to competing eligible telecommunications carriers would be clearly identified, and thus competing carriers would be able to assess more accurately whether competitive entry is viable in a particular high-cost area. In addition, high-cost support would be distributed in such a manner that support levels in each high-cost wire center would be proportionate to costs. We seek comment on these proposals and tentative conclusions.

D. Hold-Harmless and Portability of Support

117. As discussed above in section IV(B)(4), we agree with the Joint Board that the federal high-cost support mechanism should have a hold-harmless provision to prevent immediate and substantial reductions of federal support and potentially significant rate increases. Under such a hold-harmless provision, the amount of support provided would be the greater of the amount generated under the forward-looking mechanism or the explicit amount presently received. We seek comment on how we should implement such a hold-harmless provision to best accomplish this goal. Specifically, we seek comment on whether the hold-harmless provision should be implemented on a state-by-state basis or on a carrier-by-carrier basis.

118. Under a state-by-state approach, the total amount of federal support provided in each state would be the greater of the total amount indicated by the forward-looking mechanism or the total amount presently received by carriers in the particular state. For example, assume a state has two carriers, Carrier A and Carrier B, each presently receiving $100 in federal high-cost intrastate support. Assume further that under the forward-looking mechanism, Carrier A is entitled to $100 and Carrier B is entitled to $95. The total amount of support indicated by the forward-looking mechanism ($195) is less than the total amount of support under the present mechanism ($200). Therefore, the hold-harmless provision would supply an additional $5 of support. Assume, however, that under the forward-looking mechanism, Carrier A is entitled to $120 and Carrier B is entitled to $90. The total amount

[292] *See* section V(B)(2), *supra*.

of support indicated by the forward-looking mechanism ($210) is greater than the total amount of support under the present mechanism ($200). Although Carrier B would receive less support under the forward-looking mechanism, the state, as a whole, would receive more support under the forward-looking mechanism. Therefore, the hold-harmless provision does not supply any additional support. We believe that such a state-by-state hold-harmless is likely to prevent substantial increases in the size of the high-cost support mechanism because an increase in support for one carrier can be offset by a decrease in support for another carrier when determining the total amount of hold-harmless support provided in a particular state. On the other hand, the state-by-state approach may not prevent a decrease in support for certain carriers within a particular state. Redistribution of federal support within the state, however, may be accomplished by state commission action.[293]

119. In contrast, under a carrier-by-carrier hold-harmless approach, the amount of federal support provided to each carrier in a state would be the greater of the amount indicated by the forward-looking mechanism or the explicit amount presently received by the carrier. For example, assume a state has two carriers, Carrier A and Carrier B, each presently receiving $100 in support. Assume further that, under the forward-looking mechanism, Carrier A is entitled to $125 and Carrier B is entitled to $75. Under a carrier-by-carrier hold-harmless provision, Carrier A would receive $125 pursuant to the forward-looking model, and Carrier B would receive $100 pursuant to the hold-harmless provision. Thus, the total amount of federal support provided in that state would increase to $225. A carrier-by-carrier approach ensures that no carrier receives less support under the forward-looking mechanism than it receives under the present mechanism. We believe, however, that the carrier-by-carrier approach, as opposed to the state-by-state approach, is more likely to inflate the size of the high-cost support mechanism because the amount of support provided to each carrier can only increase under this approach. Using updated model outputs, we ask commenters to comment on whether a state-by-state or a carrier-by-carrier hold-harmless approach is more consistent with universal service principles set forth in the Act and the role of the federal mechanism in providing high-cost support.

120. In addition, in the event that the Commission adopts a state-by-state hold-harmless provision, we seek comment on how such a provision should allocate support among carriers in the event that the total amount of hold-harmless support provided in a particular state is insufficient to fully hold each carrier harmless. Specifically, in the event the Commission adopts a state-by-state hold-harmless approach, we propose allocating the total amount of support *pro rata* among such carriers based on their relative reductions in support. For example, assume that a state has three carriers, Carrier A, Carrier B, and Carrier C. Assume further that, under the present mechanism, Carrier A receives $150, Carrier B receives $125, and Carrier C receives $100. Also assume that, under the forward looking mechanism, Carrier A is entitled to $175, Carrier B is entitled to $100, and Carrier C is entitled to $75. The total amount of support indicated by the forward-looking mechanism ($350) is less than the total amount of support under the present mechanism ($375).

[293] *See* section V(C), *supra*.

Therefore, a state-by-state hold-harmless provision would provide an additional $25 of support. Because Carrier B and Carrier C have experienced a combined reduction in support of $50 and Carrier A has experienced no reduction in support, the $25 of hold-harmless support must be allocated between Carrier B and Carrier C. Under our proposal, the hold-harmless support would first be allocated to the carrier experiencing the greater relative reduction in support. Here, Carrier B received 80 percent ($100/$125) of its previous support amount, and Carrier C received 75 percent ($75/$100) of its previous support amount. In order to place Carrier B and Carrier C on equal footing, therefore, the first $5 of the total hold-harmless amount would be allocated to Carrier C, resulting in both Carrier B and Carrier C receiving 80 percent of their previous amount of support. The remaining $20 of support would be allocated *pro rata* between Carrier B and Carrier C so that both carriers receive the same total percentage of the support provided under the present mechanism. Carrier B would receive an additional $11.11 ($125/$225 x $20), for a total of 89 percent ($111.11/$125) of its support under the present mechanism, and Carrier C would receive an additional $8.88 ($100/$225 x $20), for a total of 89 percent ($88.88/$100) of its support under the present mechanism. We believe that this method of allocation allows for an equitable distribution of support in the event that the total state-by-state amount is insufficient to fully hold each carrier harmless. We seek comment on this proposal.

121. In the alternative, we seek specific comment on whether, if we eventually adopt a state-by-state rather than a carrier-by-carrier hold-harmless approach, we should distribute universal service high-cost support directly to the state commissions, rather than to carriers. The Joint Board considered and rejected distributing federal support to the states, rather than directly to carriers because of the long-standing practice of distributing federal support directly to carriers, and the absence of any affirmative evidence in the Act or its legislative history that Congress intended to alter this method of distribution.[294] In addition, commenters that addressed this issue oppose a mechanism that would distribute support to the states.[295] We seek additional comment, however, on whether support should be distributed to the state commissions for allocation among carriers in each state instead of through a federal allocation mechanism, in the event one or more carriers in the state experienced a reduction in support as a result of a state-by-state hold-harmless mechanism.

122. We also seek comment on the relationship between the hold-harmless approaches suggested above, and the portability of federal high-cost support. As discussed above in section IV(B)(5), we concluded that, consistent with the Joint Board's recommendations and the policy we established in the *First Report and Order*, federal high-cost support should be portable, and available to all eligible telecommunications carriers, regardless of the technology used to provide the supported services. To implement portability, however, we must first determine the amount of support to be ported. Specifically, in the event a competitor wins a customer from an incumbent receiving hold-harmless support, we seek comment on whether

[294] *Second Recommended Decision*, 13 FCC Rcd at 24767, para. 61.

[295] RTC comments at 16-17; Sprint comments at 2-3; USTA comments at 9-10.

the competitor should receive the incumbent's hold-harmless support, or whether the competitor should receive the amount of support determined on a forward-looking basis. Making the hold-harmless amount available to the competitor appears to be more competitively neutral, because both carriers would receive the same amount. However, given that the purpose of the hold-harmless provision is to prevent sudden rate increases by carriers that have grown dependent on current support in designing their rate structures, the hold-harmless amount could represent a windfall to an efficient competitor. While making the forward-looking amount available to the competitor and providing the hold-harmless amount to the incumbent may not be as competitively neutral, it would appear to approximate more closely the amount necessary to support high-cost service in the area. We seek comment on this issue. We encourage commenters to use updated model outputs in framing their comments on the issue of portability.

E. Adjusting Interstate Access Charges to Account for Explicit Support

1. Background

123. As discussed above, we believe that, to implement section 254(e) of the Act, this Commission should make explicit existing implicit support in interstate access charges.[296] Thus, we are trying in the universal service and access charge reform proceedings to identify the types and amount of implicit support in interstate access charges. Once we do so, we will require carriers to remove from access charges any amounts we convert to explicit universal service support. In this section we seek comment on how to reduce interstate access charges to account for the high-cost support we determine shall be recovered instead as explicit, high-cost, interstate universal service support.[297] We emphasize that in this section we are solely concerned with issues concerning support that is implicit in *interstate* mechanisms. Any support identified in interstate mechanisms is separate and distinct from federal support that may be provided to ensure the reasonable comparability of intrastate rates.

124. In the past, the Commission's price cap and cost-of-service rules resulted in charges to certain end-users that exceeded the cost of the service they received. To the extent that these rates did not reflect the full underlying cost of providing access service, they could be said to embody implicit interstate support. Some of this support resulted from the Commission's rate structure rules, which sometimes prevented incumbent LECs from recovering their access costs in the same way they had incurred them.[298] The separations

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[296] As noted in section IV(A)(3), *supra*, this statutory goal is separate and distinct from the statutory goal of ensuring reasonably comparable intrastate rates.

[297] We note that the federal support determined by the methodology described in section IV(B), *supra*, is intended to ensure reasonably comparable intrastate rates, and is separate and apart from any support that we may identify in interstate rates. Because the support determined by the methodology described in section IV(B) will be applied to intrastate rates, there is no reason to reduce interstate access charges to reflect that support.

[298] *Access Charge Reform Order*, 12 FCC Rcd at 15994-95, 15998.

rules, which divide costs between the interstate and intrastate jurisdictions, may have caused additional support.[299] These support systems persisted for more than a decade as a means to serve universal service goals.

125. Another source of interstate implicit support stems from our requirement that incumbent LECs recover most of their access charges through averaged rates.[300] Rather than assess different rates in different parts of their service areas, each incumbent LEC must derive averaged rates. Consequently, the rates will recover more than the cost of providing service in some parts of the incumbent LEC's service area, and less than the cost of providing service in other parts of the service area. Thus, averaged interstate access rates also can be seen as implicit support from areas where the cost of service is less than the averaged rate, to areas where the cost of service is more than the averaged rate.

126. To promote universal service goals while fostering competition, Congress directed in the 1996 Act that federal universal service support be explicit, and recovered on an equitable and nondiscriminatory basis from all telecommunications carriers providing interstate telecommunications services.[301] In the *First Report and Order*[302] and the *Access Charge Reform Order*,[303] the Commission made several changes to its access charge rules in an effort to remove implicit support from interstate access charges and to make federal universal service support mechanisms explicit. The Commission removed Long Term Support (LTS) from interstate access charges and made it part of explicit federal support mechanisms.[304]

127. In the *Access Charge Reform Order*, the Commission also changed the manner in which price cap LECs recover their permitted common-line revenues.[305] As a result, price cap LECs now recover their permitted common line revenues through the SLC, the PICC, and the per-minute CCLC. The SLC is an end-user charge that carriers assess on a per-line basis to

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[299] *Access Charge Reform Order*, 12 FCC Rcd at 15995. For example, the separations rules required larger incumbent LECs to allocate the costs of their switching facilities between the interstate and intrastate jurisdictions on the basis of relative use. Smaller incumbent LECs were permitted to allocate a greater share of their switching costs to interstate access services than would result from the relative use allocator.

[300] Section 69.3 of the Commission's rules prohibit incumbent LECs from disaggregating or deaveraging their access charges within a study area. 47 C.F.R. § 69.3(e)(7). "Generally, a study area corresponds to a carrier's entire service territory within a state." *In re* Price Cap Performance Review for Local Exchange Carriers, *First Report and Order*, 10 FCC Rcd 8961, 9150 n.615 (1995). *But see, e.g.*, 47 C.F.R. § 69.112 (allowing term and volume discounts in direct-trunked transport charges within each study area).

[301] 47 U.S.C. § 254(b)(4).

[302] *First Report and Order*, 12 FCC Rcd at 9162-70.

[303] *Access Charge Reform Order*, 12 FCC Rcd at 16147-48.

[304] *First Report and Order*, 12 FCC Rcd at 9169; *Access Charge Reform Order*, 12 FCC Rcd at 16145-48.

[305] *Access Charge Reform Order*, 12 FCC Rcd at 16007-33.

recover their average cost of providing a line. Because the SLC for primary residential and single-line business lines is capped at $3.50, the SLC does not fully recover the permitted common-line revenues of providing service to the majority of these customers. Consequently, the SLC cap may create implicit support to primary residential lines. Revenues from interstate access charges, such as the CCLC and multi-line PICC, provide support that allows us to maintain the primary residential SLC cap. The PICC for primary residential and single-line business lines has a ceiling that will gradually increase until it reaches a level that allows full recovery of the permitted common line revenues from flat charges assessed to end-users and IXCs. As the primary residential and single-line business PICCs increase, the amount of permitted common-line revenues associated with those lines that the non-primary residential and multi-line business line PICCs recover will fall to zero.[306]

2. Discussion

128. As discussed above, in section IV(A)(3), we agree with the Joint Board that we have the jurisdiction and statutory obligation to identify any universal service support that is implicit in interstate access charges and, as far as possible, make that support explicit. In this section we seek comment on how we should adjust interstate access charges to offset universal service support that we subsequently identify in interstate access charges and allow carriers to recover through increased support from the new federal mechanism. Because of the role access charges have played in supporting universal service, it is critical to implement changes in the interstate access charge system together with the complementary changes in the federal universal service support mechanism we adopt today. We seek comment on how we should adjust interstate access charges to reflect any increases in federal explicit support provided to non-rural carriers under the new federal mechanism and methodology.

129. The Commission determined in the *First Report and Order* that non-rural carriers would begin to receive high-cost support on July 1, 1999, based on forward-looking costs, and delayed the implementation of support based on forward-looking costs for rural carriers until at least January 1, 2001.[307] As discussed above,[308] more time is needed to verify the models that will determine the forward-looking costs on which the intrastate high-cost support for non-rural carriers will be based. Thus, we are postponing the July 1, 1999, implementation of intrastate high-cost support for non-rural carriers until January 1, 2000. Because these models may also be used to determine levels of implicit support in interstate access charges and the amount of federal support a carrier should receive, this will also delay determination of the interstate high-cost support for non-rural carriers. This section addresses

[306] *Access Charge Reform Order*, 12 FCC Rcd at 15999-16000.

[307] *First Report and Order*, 12 FCC Rcd at 8910, 8917-18. The *First Report and Order* determined that non-rural carriers should begin to receive support based on forward-looking costs on January 1, 1999. This implementation date was extended to July 1, 1999, in conjunction with the referral of issues back to the Joint Board. *Referral Order* at para. 6.

[308] *See* section IV(B)(1), *supra*.

only the question of how to reduce interstate access charges to reflect increased explicit federal support for non-rural carriers that currently flows within the interstate jurisdiction. We will address any necessary interstate access charge reductions for rural carriers at a later date.

130. We tentatively conclude that we should require price cap LECs to reduce their interstate access rates to reflect any increased explicit federal high-cost support they receive. To do otherwise would give these carriers a windfall by allowing them to maintain rates that include implicit high-cost support even after the support has been made explicit. We tentatively conclude that the carriers should make an exogenous downward adjustment to the common line basket. In the short run, this will reduce the CCLC and multi-line PICCs. In the longer run, this adjustment will keep down scheduled increases for the primary residential and single-line business PICC. The PICC is often passed on to the end user by the IXC that pays it. This approach will serve the dual purpose of eliminating implicit support and holding down per-line rates associated with primary residential and single-line business lines. This will, therefore, help keep basic telephone service affordable and comparable.[309]

131. We seek comment on whether we should require price cap LECs to reflect explicit high-cost support by making the downward exogenous adjustment to their common line basket's price cap indexes (PCIs). Alternatively, we seek comment on whether we should instead permit incumbent LECs to reduce their access rates to offset the explicit support by lowering their common line charges on a geographically deaveraged basis. For example, we could reduce implicit support resulting from geographic averaging by permitting carriers to lower their SLCs on a deaveraged basis, reducing SLCs in low-cost areas, while maintaining the SLC caps in our rules for high-cost areas. We seek comment on whether we should allow carriers to determine where they lower their rates under such an approach. Alternatively, we seek comment on whether we or the state commissions should delineate the permissible areas for deaveraged reductions, and how those areas should be determined. We could, for example, require the deaveraging to occur based on the same rate zones that some states have already identified pursuant to our deaveraging requirement for the pricing of unbundled network elements and interconnection.[310] We also seek comment on which common line rate elements should be deaveraged.

132. We also seek comment on whether price cap carriers should also reduce their

[309] 47 U.S.C. § 254(b).

[310] As discussed in note 272, *supra*, our deaveraging rules, *see* 47 C.F.R. § 51.507(f), are currently subject to a temporary stay that we issued to allow states time to come into compliance with the rules following the U.S. Supreme Court's decision reaffirming the Commission's authority to regulate the pricing of unbundled network elements and interconnection. *Stay Order*, FCC 99-86.

base factor portion (BFP).[311] For carriers that calculate their SLC based on the BFP,[312] this would result in reductions to the SLC for multi-line business and non-primary residential lines, which would be offset by smaller reductions in CCL and multi-line PICC rates. We also seek comment on whether a downward adjustment to the incumbent LECs' PCIs should be across-the-board instead of targeted to the common line basket.

133. We also seek comment on whether we should reduce the SLC on primary residential and single-line business lines. Although such a reduction is an option, it would not further the goal of reducing implicit interstate support, unless it was targeted to low-cost wire centers within a study area. The current SLC cap of $3.50 per month on primary residential and single-line business lines already creates interstate implicit support for most of those lines. A general reduction in the SLC would increase the need for such support and would not reduce support implicit in the CCLC and the multi-line PICC. Although, at the end of the transition initiated by our *Access Charge Reform Order*, the combination of the SLC and PICC assessed to each line will permit carriers to recover the full interstate-allocated portion of their common line costs from the line that caused those costs to be incurred, any reduction in the SLC would delay this transitional process and result in a higher PICC on primary residential and single-line business lines. We do not expect any reductions to the common line basket to reduce common-line recovery below $3.50 per month, per line, but we seek comment on whether we should limit any reductions to the common line basket to the amount needed to reduce common line revenues per line to $3.50. We seek comment on how the remainder of the adjustment should be applied if that were to occur.

134. We tentatively conclude that non-rural rate-of-return LECs should apply additional interstate explicit high-cost support revenues to the CCL element, thus reducing CCL charges. We seek comment on this tentative conclusion. We also seek comment on whether these revenues should instead be deducted from the BFP, which would reduce the SLC for multi-line business lines and diminish the reduction to the CCLC. Furthermore, as noted in section IV(A)(3), above, the Joint Board set forth certain guidelines that the Commission should follow when taking action to remove implicit support from interstate access rates, including: (1) there should be a corresponding dollar-for-dollar reduction in interstate access charges as implicit support in interstate access rates is replaced with explicit support;[313] (2) any reductions in interstate access rates should benefit consumers;[314] (3)

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[311] To compute the SLC, price cap and rate-of-return LECs generally forecast their actual common line costs using rate-of-return principles and compute the BFP of this common line revenue requirement. LECs compute the BFP revenue requirement by forecasting their total common line revenue requirement for the upcoming tariff year, and deducting certain costs that are assigned directly to carrier common line rate elements. 47 C.F.R. §§ 69.501, 69.502.

[312] *See* 47 C.F.R. § 69.152(c)(1), (b)(2).

[313] *Second Recommended Decision*, 13 FCC Rcd at 24755, para. 23.

[314] *Second Recommended Decision*, 13 FCC Rcd at 24755, para. 23.

universal service should bear no more than a reasonable share of joint and common costs;[315] and (4) reasonable comparability should not be jeopardized, and neither consumers in general nor particular classes of consumers should be harmed.[316] We seek comment on whether our proposals in this section conform to the Joint Board's guidelines.

135. Finally, we recognize that some proposals for access reform may have the added benefit of directing more federal support to high-cost areas, relative to low-cost areas. For example, some parties have suggested using the cost proxy model as the basis for converting the excess of access rates above the forward-looking cost of access from implicit support to geographically deaveraged support amounts.[317] These support amounts would be both explicit and portable to competing LECs that serve the lines to which these support amounts would be assigned. It would appear that these proposals could potentially serve to direct more federal support to high-cost areas, relative to low-cost areas, much like we believe the use of the cost model in conjunction with an appropriate benchmark could direct such additional support to high-cost areas. We seek comment on whether and how adoption of an access reform proposal that would direct more federal support to high-cost areas, relative to low-cost areas, should affect our calculation of high-cost universal service support, if at all. To the extent possible, parties commenting on this issue should address specific access reform proposals that could be used in this manner to reform both high-cost universal service and access charges simultaneously.

[315] *Second Recommended Decision*, 13 FCC Rcd at 24755, para. 23. *See also* 47 U.S.C. 254(k).

[316] *Second Recommended Decision*, 13 FCC Rcd at 24755, para. 23.

[317] *See, e.g.* "A Proposal for Universal Service and Access Reform" by Bill Rogerson and Evan Kwerel, CC Docket Nos. 96-45, 96-262 (filed May 27, 1999).

VI. PROCEDURAL MATTERS

A. Regulatory Flexibility Act Certification

136. The Regulatory Flexibility Act (RFA)[318] requires a Regulatory Flexibility Act analysis whenever an agency publishes a notice of proposed rulemaking or promulgates a final rule, unless the agency certifies that the proposed or final rule will not have "a significant economic impact on a substantial number of small entities," and includes the factual basis for such certification.[319] The RFA generally defines "small entity" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632.[320] The Small Business Administration (SBA) defines a "small business concern" as an enterprise that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.[321]

137. We conclude that neither an Initial Regulatory Flexibility Analysis nor a Final Regulatory Flexibility Analysis are required here because the foregoing FNPRM seeks comment only on the mechanisms that the Commission should use to provide high-cost support to non-rural LECs, and the foregoing Report and Order adopts a final rule affecting only the amount of high-cost support provided to non-rural LECs. Non-rural LECs generally do not fall within the SBA's definition of a small business concern because they are usually large corporations, affiliates of such corporations, or dominant in their field of operations.[322] Therefore, we certify, pursuant to the RFA, 5 U.S.C. § 605(b), that the proposals contained in the FNPRM, and the final rule adopted in the Report and Order, will not have a significant

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[318] The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[319] 5 U.S.C. § 605(b). *See* 5 U.S.C. §§ 603, 604.

[320] 5 U.S.C. § 601(3), (6) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of small business concern applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[321] 15 U.S.C. § 632. The SBA defines a small telecommunications entity in SIC code 4813 (Telephone Communications, Except Radiotelephone) as an entity with 1,500 or fewer employees. 13 C.F.R. § 121.201.

[322] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, Fifth Report and Order, 13 FCC Rcd 21323, 21362-63, paras. 93-94 (1998) (No FRFA required where report and order affected only non-rural LECs); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, Further Notice of Proposed Rulemaking, 12 FCC Rcd 18514, 18582-83, paras. 183-185 (1997) (No IRFA required where further notice of proposed rulemaking affected only non-rural LECs).

economic impact on a substantial number of small entities.[323] The Office of Public Affairs, Reference Operation Division, will send a copy of this certification, along with this FNPRM and Report and Order, to the Chief Counsel for Advocacy of the SBA in accordance with the RFA, *see* 5 U.S.C. § 605(b), and to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). In addition, this certification, as well as this FNPRM and Report and Order (or summaries thereof), will be published in the Federal Register.

B. Effective Date of Final Rules

138. We conclude that the amendments to our rules adopted herein shall be effective upon publication in the Federal Register. Pursuant to our rules, our existing high-cost support mechanism is scheduled to be phased out on July 1, 1999.[324] In this Order, however, we conclude that the new forward-looking high-cost support mechanism should be implemented on January 1, 2000, instead of July 1, 1999, as previously planned. The amendments we adopt in this Order extend the present high-cost support mechanism from July 1, 1999, until January 1, 2000, when the new forward-looking high-cost support mechanism will be implemented. Thus, the amendments must become effective before July 1, 1999. Making the amendments effective 30 days after publication in the Federal Register would jeopardize the required July 1, 1999 effective date. Accordingly, pursuant to the Administrative Procedure Act, we find good cause to depart from the general requirement that final rules take effect not less than 30 days after their publication in the Federal Register.[325]

C. Filing Comments

139. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before July 2, 1999, and reply comments on or before July 16, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

140. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-

[323] 5 U.S.C. § 605(b).

[324] *See* 47 C.F.R. § 36.601(c).

[325] *See* 5 U.S.C. § 553(d)(3).

mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

141. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W.; TW-A325; Washington, D.C. 20554.

142. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5-A523, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding, including the lead docket number in this case (CC Docket No. 96-45), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

VII. ORDERING CLAUSES

143. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 218-220, 214, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 218-220, 214, 254, 303(r), 403, and 410, the REPORT AND ORDER IS ADOPTED. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

144. IT IS FURTHER ORDERED that Part 36 of the Commission's Rules, 47 C.F.R. § 36, IS AMENDED as set forth in Appendix C hereto, effective immediately upon publication in the Federal Register.

145. IT IS FURTHER ORDERED that the Further Notice of Proposed Rulemaking contained herein IS ADOPTED.

146. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of the Further Notice of Proposed Rulemaking, including the Regulatory Flexibility Act Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A
PARTIES FILING INITIAL COMMENTS

Commenter	Abbreviation
Airtouch Communications	AirTouch
Ameritech	
AT&T Corp.	AT&T
Bell Atlantic Telephone Companies	Bell Atlantic
BellSouth Corporation	BellSouth
Boston University	Boston
California Public Utilities Commission	California Commission
Colorado Public Utilities Commission	Colorado Commission
Competitive Telecommunications Association	CompTel
District of Columbia Public Service Commission	D.C. Commission
Dobson Communications Corporation	DCC
General Services Administration	GSA
GTE Service Corporation	GTE
Harris Skrivan & Associates LLC	HSA
Illinois Commerce Commission	Illinois Commission (Supplement)
Iowa Utilities Board	IUB
ITCs, Inc.	ITC
Kentucky Public Service Commission	Kentucky Commission
MCI Worldcom, Inc.	MCI Worldcom
Maine Public Utilities Commission	Maine Commission, *et al.*
Arkansas Public Service Commission	
Kansas Corporation Commission	
Montana Public Service Commission	
New Hampshire Public Utilities Commission	
New Mexico Public Utilities Commission	
Vermont Public Service Board	
West Virginia Public Service Commission	
Maryland Public Service Commission	Maryland Commission, *et al.*
Connecticut Department of Public Utility Control	
Delaware Public Service Commission	
Illinois Commerce Commission	
Massachusetts Department of Telecommunications and Energy	
National Exchange Carrier Association	NECA
New York State Department of Public Service	New York Commission
Personal Communications Industry Association	PCIA
Public Utilities Commission of Ohio	Ohio Commission
Puerto Rico Telephone Company	PRTC
Rural Telephone Coalition	RTC
SBC Communications, Inc.	SBC
Sprint Corporation	Sprint
Telecommunications Resellers Association	TRA

United States Telephone Association	USTA
U S WEST Communications, Inc.	U S WEST
Virgin Islands Telephone Corporation	Vitelco
Western Wireless Corporation	Western Wireless
Wyoming Public Service Commission	Wyoming Commission

APPENDIX B
PARTIES FILING REPLY COMMENTS

Commenter	Abbreviation
Ad Hoc Telecommunications Users Committee	Ad Hoc
Ad Hoc Telecommunications Users Committee	Ad Hoc (Erratum)
Ameritech	
AT&T Corp.	AT&T
BellSouth Corporation	BellSouth
Communications Workers of America	CWA
General Communication, Inc.	GCI
General Services Administration	GSA
GTE Service Corporation	GTE
MCI Worldcom, Inc.	MCI Worldcom
Maine Public Utilities Commission	Maine Commission *et al.*
Arkansas Public Service Commission	
Kansas Corporation Commission	
Montana Public Service Commission	
New Hampshire Public Utilities Commission	
New Mexico Public Utilities Commission	
Vermont Public Service Board	
West Virginia Public Service Commission	
Pennsylvania Public Utility Commission	Pennsylvania Commission
Puerto Rico Telephone Company	PRTC
Rural Utilities Service	RUS
Sprint Corporation	Sprint
United Service Administrative Company	USAC
United States Cellular Corporation	USCC
United States Telephone Association	USTA
U S WEST Communications, Inc.	U S WEST
Western Wireless Corporation	Western Wireless

APPENDIX C
FINAL RULES

Part 36 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 36 - JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES.

1. Section 36.601 is amended as follows: all references in paragraph (c) to "July 1, 1999" are replaced with "January 1, 2000."

Statement and Dissent in Part of Chairman William E. Kennard

on

Federal-State Joint Board Recommendations Regarding High-Cost Support for Non-Rural LECs

One of the most important parts of the Telecommunications Act of 1996 was the affirmation of the universal service principle. This principle has several applications, all of them based on the congressional commitment that quality services should be available to all Americans at just, reasonable and affordable rates. Congress made clear that consumers in rural and other high-cost areas should have access to a wide variety of telecommunications and information services that are reasonably comparable to those available in urban areas, and at reasonably comparable rates.

Our responsibility to ensure that telecommunications services are reasonably comparable in all areas and available at just, reasonable, and affordable rates is one that we share with the states. This partnership works best when the Commission and state commissions work together. Today, we adopt a new framework for high-cost support for non-rural telephone companies based on recommendations from the Federal-State Joint Board on Universal Service. This action reflects the dedicated, unified effort of the Commission and state commissions in pursuit of common goals.

We conclude that a primary purpose of federal high-cost support mandated in section 254 of the Telecommunications Act is to ensure that states have the ability to achieve reasonably comparable rates within and among states. Accordingly, we adopt a mechanism that provides high-cost support based both on the costs of providing supported services and on the state's ability to support those costs using its own resources. We also adopt a "hold harmless" provision, which will ensure that the amount of support provided in each state will not be less than the current amount of explicit support provided in that state. Finally, we ask for comments on some issues related to the manner in which high-cost support should be calculated and distributed.

I not only support this Report and Order and Further Notice, I am proud of most of the decisions in this item. I do have one disagreement with the majority on this item, however. In paragraph 118 of the Further Notice, the Commission is seeking comment on an idea that high cost support might be distributed directly to state commissions rather than to carriers. Although one might imagine situations where such "block grants" might be appropriate or even desirable, I am confident that this is not such a situation. The Joint Board considered and rejected this idea, and for good reason. Federal support has traditionally been distributed directly to the carriers themselves. Under section 254 of the Act, support must ultimately go to carriers. Accordingly, the block grant idea amounts to a proposal to add an additional layer of administration, which is bound to increase costs and reduce efficiency. The states themselves are generally opposed to the idea as evidenced by the rejection of this idea by the Joint Board. Similarly a majority of the commenters in this proceeding, including many of the recipients of high-cost support are also opposed to the idea. In sum, block grants are not a good idea for high-cost support.

SEPARATE STATEMENT OF COMMISSIONER MICHAEL K. POWELL

Re: Seventh Report & Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report & Order in CC Docket No. 96-262, CC Docket Nos. 96-45, 96-262

I am writing separately to raise just a couple of points in my current thinking on high cost universal service and access reform that I believe deserve emphasis.

First, as this *Order* indicates, the Commission has concluded, in consultation with the Federal-State Joint Board, that phone rates are generally affordable and that federal high cost support for the intrastate jurisdiction should not grow significantly at this time. I believe these goals are two of the most important we should pursue as we push forward to finalize the high cost support mechanism. I also would favor targeting high cost support in a way that better promotes competitive entry.

Second, I am intrigued by the idea, suggested by our Chief Economist and perhaps others, that there may be ways to direct additional support to high cost areas as a by-product of reforming access charges. In particular, I am open to the idea that the cost model our staff is developing could be effective in geographically de-averaging the support in access that we might convert from implicit to explicit. I think this approach may have some important merits. For example, it could potentially facilitate competition by making access support de-averaged and portable so that CLECs can win the support associated with particular customers when they convince those customers to switch to the CLEC from the ILEC. In addition, this approach might discourage inefficient entry in denser, low cost areas by lessening the degree to which access subsidies are exaggerated in those areas, thereby also making high cost consumers relatively more attractive to CLECs. (Note, however, that in declaring my openness to this sort of approach, I do not wish to prejudge the important issue of whether and the extent to which access charges overall should be cut.)

I must stress that my interest in pursuing this approach is tentative but serious. As such, I encourage parties to comment on whether such an approach is workable and whether it would provide for moderate increases in federal high cost funding and better promote competition without abandoning the Joint Board's goal of not increasing such funding substantially.

In closing, I would like to thank our diligent and exceptional Common Carrier Bureau staff for their efforts on this *Order* and on high cost universal service and access reform generally. These issues are almost frightfully complex, and we could never reach our collective goal of reforming access charges and universal service without the staff's talent and dedication. I hope the Commission can marry the staff's dedication with the courage we will need to resolve these complex and politically-charged issues in a rational way. I look forward to working hard toward that goal with the staff and my colleagues over the next few months.